NOTES OF CASES.

Banks and Banking—Negligence in Collection of Check.—In Cohen *v.* Tradesmen's Nat. Bank, 105 Atl. 43, the Supreme Court of Pennsylvania held that a collecting bank is liable for its negligence in collecting a check only to the person employing it to make the collection.

It appeared that plaintiff sent to the treasurer of a club to which he belonged his check drawn on the Southwark National Bank. The treasurer deposited the check with the club's banker, which in turn sent it to defendant for collection. By mistake defendant presented it to the wrong bank, which returned it with "W. B." written thereon, signifying that it had been sent to the "wrong bank." The writing was obscure, and defendant, mistaking the "W. B." for "N. F." which signified "no funds," returned it to the banker with an indorsement thereon of "Not sufficient funds." The banker in turn sent it back to the treasurer of the club, who returned it to plaintiff, upon receiving another check from plaintiff for a like amount. Plaintiff had sufficient funds in the Southwark National Bank with which to pay the first-mentioned check. He had no contractual relations with defendant. It was averred that by reason of the above-stated negligence "plaintiff has sustained substantial damage to his credit, business, standing and reputation."

The court said: "There was no contract between the parties to this action, and no statute in any way dealing with the subject; and hence plaintiff's counsel fairly and frankly puts his right to recover upon the proposition that the nature of a bank's business is such that it 'owes a general duty to all the public not to be guilty of negligence' in the transaction of its business. For that proposition he cites only McKinster *v.* Bank of Utica, 9 Wend. (N. Y.) 46, affirmed on appeal in Bank of Utica *v.* McKinster, 11 Wend. (N. Y.) 473, and Bank of Washington *v.* Triplett, 1 Pet. 25, 7 L. Ed. 37. Unhappily those cases do not bear out his contention.

"In McKinster *v.* Bank of Utica, plaintiff was the owner of a note and pledged it with one Pardee as collateral security for a debt of his (McKinster's) under an agreement that in case of nonpayment it was to be returned to plaintiff. Pardee deposited it with defendant for collection, and defendant protested it, but failed to give notice to Dygert, the only responsible indorser on it. It was held that as "the property in the note was not vested in Pardee—he held it as collateral security, to be returned if not paid"—the bank was really acting as agent for plaintiff, the real owner of the note, and was liable to him for its negligence.

"In Bank of Washington *v.* Triplett, supra, the suit was by the holder of the note, and the bank was held to be the agent of the holder, and not of the drawer.

"It is well settled that the relation between the depositor of a check and the bank which receives it for collection is that of principal and agent (2 Michie on Banks and Banking, 1502; Montgomery Bank *v.* Albany City Bank, 7 N. Y. 459; Dodge *v.* Freedman's Savings & Trust Co., 93 U. S. 379, 23 L. Ed. 920), and that the bank is agent for the holder or payee only, and not for the drawer or maker (2 Bolles on Modern Law of Banking, 511; Ward *v.* Smith, 7 Wall. 447, 19 L. Ed. 207; Bank of Washington *v.* Triplett, supra). This conclusion is in accord with the general law of agency, that the agent is liable only to his principal for any acts or neglects in relation to the subject-matter of the agency. He may, of course, become liable to others for his torts, as for slander, libel, or injuries to person or property, or to the commonwealth for his crimes, and cannot shield himself behind his agency. Here, however, no such cause of action is averred, but only carelessness and negligence in sending the check to the wrong bank, and in returning it with a slip upon it marked "Not sufficient funds," and for those neglects plaintiff cannot be heard to complain.

"As a result of our independent examination we have found two cases directly in point, both antagonistic to plaintiff. In McCullock *v.* Commercial Bank, 16 La. 566, it appeared that a note had been deposited for collection; the collecting bank protested it and gave notice to the second indorser, but negligently failed to notify the first indorser. The second indorser paid the note, and sued the bank for its neglect. It was held that there was no privity between him and the bank, which was responsible to the holder only, and plaintiff was not permitted to recover. Our own case of Morris *v.* First Nat. Bank of Allegheny, 201 Pa. 160, 50 Atl. 1000, decides the same thing."

Carriers—Liability for Assault on Passenger by News Agent.—In Blankenbaker *v.* Chicago, M. & St. P. Ry. Co., 168 S. W. 744, the Supreme Court of South Dakota held that a carrier allowing a news agent on its train under contract with another, was liable for his assault on a passenger in the course of and within the scope of his business.

The court said: "The question involved in this case is not one of negligence, but is a question of the liability of a principal for the wrongful tort actions of the agent done within the scope of the agent's authority. The allegation of negligence in the complaint in this action was unnecessary, a complete cause of action having been alleged without reference thereto. In Dwinelle *v.* New York C. & H. Ry. Co., 120 N. Y. 117, 24 N. E. 319, 8 L. R. A. 224, 17 Am. St. Rep. 611, it was held that the porter of a sleeping car which formed a part of the train of a railway company under contract with the